KARPAL SINGH

v.

INSPECTOR-GENERAL OF POLICE & ORS.

SUPREME COURT, KUALA LUMPUR
HARUN HASHIM SCJ
[SUPREME COURT CRIMINAL APPEAL NO. 52 OF 1988]
16 DECEMBER 1988

ADMINISTRATIVE LAW: *Habeas Corpus - First detention order quashed by High Court - Applicant re-arrested and detained - Second application for habeas corpus - Supreme Court upheld first detention order - Second detention order revoked - Second application for habeas corpus dismissed - First detention order still valid.*

The appellant appealed against the decision of the High Court which dismissed a second application for *habeas corpus* against the detention order issued under s. 8(1) Internal Security Act. After the High Court had allowed an earlier application for *habeas corpus* against a similar order, the appellant was re-arrested and a second detention order was issued. The second application was heard by the High Court prior to the hearing of the appeal to the Supreme Court in respect of the first detention order. The High Court reserved judgment to await the decision of the Supreme Court. The Supreme Court upheld the validity of the first detention order. The second detention order was then revoked. The High Court dismissed the second application on the grounds that the second detention order had been revoked and the Supreme Court had upheld the validity of the first detention order.

Held:

[1] The decision of the High Court whereby the second application for *habeas corpus* dismissed was upheld as there were two supervening events after the hearing of the second application *viz* the Supreme Court upheld the validity of the first detention order and the second detention order was revoked.

[2] It could not be implied that the first detention order was revoked by the issuance of the second detention order.

Legislation referred to:
Internal Security Act 1960, ss. 8(1), 73(1)

For the appellant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondent - Abdul Hamid bin Mohd.; SFC

[**Bahasa Malaysia** Translation of Headnotes]

UNDANG-UNDANG PENTADBIRAN: *Habeas corpus - perintah penahanan pertama dibatalkan oleh Mahkamah Tinggi - Pemohon ditangkap semula dan ditahan - Permohonan kedua bagi habeas corpus - Mahkamah Agung mengesahkan perintah penahanan pertama - Perintah penahanan kedua dibatalkan - Permohonan kedua bagi habeas corpus ditolak - Perintah penahanam pertama masih sah.*

Pihak perayu merayu tehadap keputusan Mahkamah Tinggi yang menolak satu permohonan kedua bagi *habeas corpus* terhadap perintah penahanan dikeluarkan di bawah Seksyen 8(1), Akta Keselamatan Dalam Negeri. Selepas Mahkamah Tinggi telah membenarkan satu permohonan *habeas corpus* terdahulu terhadap satu perintah yang serupa. Perayu telah ditangkap semula dan satu perintah penahanan kedua telah dikeluarkan. Permohonan yang

kedua telah dibicarakan oleh Mahkamah Tinggi sebelum perbicaraan rayuan itu di Mahkamah Agung mengenai perintah pernahanan pertama. Perintah penahanan kedua kemudiannya telah dibatalkan. Mahkamah Tinggi menolak permohonan kedua itu atas alasan bahawa perintah penahanan kedua telah dibatalkan dan Mahkamah Agung telah mengesahkan keesahan perintah penahanan pertama.

(1) Keputusan Mahkamah Tinggi di mana permohonan kedua bagi *habeas corpus* yang dibatalkan disahkan kerana terdapat dua kemunculan kejadian selepas perbicaraan permohonan kedua iaitu Mahkamah Agung mengesahkan keesahan perintah penahanan pertama dan perintah penahanan kedua telah dibatalkan.

(2) Tidaklah dapat disiratkan bahawa perintah penahanan pertama telah dibatalkan oleh kerana pengeluaran perintah penahanan kedua.

Perundangan yang dirujuk:
Akta Keselamatan Dalam Negeri 1960, ss. 8(1), 73(1)

Bagi pihak perayu - Karpal Singh; T/n. Karpal Singh & Co.
Bagi pihak responden - Abdul hamid bin Mohd; SFC

JUDGMENT

Harun Hashim SCJ:

The appellant was first arrested on 27 October 1987 at Kuala Lumpur under s. 73(1) of the Internal Security Act 1960 (ISA). On 19 December 1987 he was served with a detention order issued by the Minister of Home Affairs under s. 8(1) ISA to be detained at Tempat Tahanan Perlindungan, Taiping for a period of two years commencing from 19 December 1987.

On 12 January 1988 the appellant applied for an order of *habeas corpus* in the High Court at Ipoh. On 9 March 1988 Peh J granted the application and the appellant was released. About nine hours later he was re-arrested at Nibong Tebal, Pulau Pinang under s. 73(1) ISA and subsequently served with a detention order issued by the Minister of Home Affairs under s. 8(1) ISA to be detained at the Tempat Tahanan Perlindungan, Taiping for a period of two years commencing from 16 April 1988.

On 10 March 1988, the Public Prosecutor, on behalf of the respondents, appealed against the order of Peh J. On 17 March 1988 the appellant applied for an order of *habeas corpus* in the High Court at Ipoh on the grounds that his rearrest and continued detention are unlawful. Ab. Malek J heard the application on 20 & 21 April 1988 and adjourned the matter to 27 July 1988.

By then two events had intervened:

(a) This Court on 19 July 1988 allowed the appeal by the Public Prosecutor against the order of Peh J in respect of the first detention order; and

(b) The Minister of Home Affairs on 26 July 1988 cancelled the second detention order of 16 April 1988 under s. 81(3) ISA.

Ab. Malek J had in fact reserved judgment to 26 May 1988 and subsequently to June and July to await the decision of the appeal from Peh J. On 27 July 1988 he heard further evidence and argument and held that in view of the two events, he had no alternative but to dismiss the appellant's application for an order of *habeas corpus*. Hence this appeal.

In an application for an order of *habeas corpus* it is true that the detaining authority has to show that the detention of the subject is lawful. In the present case what was argued before Malek J and adjourned for judgment to 27 July 1988 was the validity of the second detention order. The validity of the first detention order had already been fully argued, considered and upheld by this Court on 19 July 1988 and accordingly the matter should not be reagitated again.

We are of the view that the interventions of:

(a) The release of the appellant following the decision of Peh J on 9 March 1988;

(b) The re-arrest of the appellant on 9 March 1988;

(c) The allegation of contempt of Court by the re-arrest; and

(d) The issuance of the second detention order on 16 April 1988 and the contention that thereby the first detention order was revoked by implication;

did not in any way affect the validity of the first detention order.

The motion dated 17 March 1988 was based on the validity or otherwise of the second detention order. On 27 July 1988 since the second detention order had by then no longer existed the motion of the appellant was therefore correctly dismissed by Malek J.

For the reasons we have stated, we would dismiss the appeal.

Also found at [1989] 1 CLJ 134